



March 20, 2000

Ms. Pamela Wolek
Assistant City Attorney
City of Amarillo
509 S.E. Seventh Avenue
P.O. Box 1971
Amarillo, Texas 79105-1971

OR2000-1096

Dear Ms. Wolek:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133237.

The City of Amarillo (the "city") received a request for "copies of all records and documents pertaining to disciplinary action taken against any Amarillo Police Officer in the past two years, complaints filed against any Amarillo Police Officer in the past two years, investigations of complaints against any Amarillo Police Officer in the past two years and the result of any such investigation." You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the city's police department is required to maintain as part of the police officer's civil service file, and one that the city's police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information

¹We assume that the "sample" records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file." Local Gov't Code § 143.089(g); see *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

The court in *City of San Antonio* addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied) (in construing section 143.089, the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). You inform this office that the submitted "documents [are] kept by the police department in accordance with TLGC §143.089(g) which did not result in disciplinary action." Consequently, we agree that the submitted records are confidential and must not be disclosed to the requestor.

You additionally submit information which you indicate are documents kept by the Civil Service Director related to the misconduct of officers which resulted in disciplinary action taken by the department. You indicate that these documents are kept in the officers' section 143.089(a) file. The civil service file must contain certain specified items, including documents relating to any misconduct in those cases where the police department took disciplinary action against the peace officer. *Id.* § 143.089(a)(2). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a).

You assert that section 143.089(f) prevents the city from releasing the information from the civil service file without the consent of the employee. Section 143.089(f) states:

The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law. (emphasis added)

In Open Records Decision No. 562 (1990), this office construed section 143.089(f) to prohibit disclosure of personnel file information only in situations not governed by the Public Information Act or other laws that require disclosure. Therefore, section 143.089(f) does not prohibit the public release of the civil service file information.

You additionally assert that the release of civil service files would violate the privacy rights of officers. Section 552.101 of the Government Code encompasses the common law right to privacy. Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). A governmental body may withhold information as protected by the common law right to privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his or her performance. See Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). We conclude that the information submitted from the civil service file may not be withheld under section 552.101 or 552.102 of the Government Code. Therefore, the information must be released, with the following exception.

The documents from the civil service file contain information that is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members. "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure. The department must withhold the home telephone numbers and family information of its officers under section 552.117(2) regardless of whether those officers elected under section 552.024 to have this information withheld. For your convenience, we have marked the type of information which must be withheld pursuant to section 552.117(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 133237

Encl. Submitted documents

cc: Ms. Debbie L. Davis
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(w/o enclosures)